
2003 Wis Eth Bd 11
IMPROPER USE OF OFFICE

The Ethics Board advises that a state public official may proceed with a plan to have another solicit assistance for operation of the official's agency to the extent, but only to the extent, that the official could undertake the solicitation directly. Whether directly or through another acting at the official's behest, the official may not solicit contributions of money, goods or service either from a lobbyist or from an organization that employs a lobbyist or from anyone if either the contribution or the failure to contribute could reasonably be expected to influence the official's action or judgment or be considered a reward for the official's action or inaction.

Facts

¶1 You are a state public official. You have sought the Ethics Board's advice about whether your reliance on others to solicit funds to support the general operation of your agency would be consistent with statutes that the Ethics Board administers.

Discussion

Pertinent statutes

¶2 Reduced to their elements the pertinent statutes provide, in part:

§13.625 (3)

No elective state official
May solicit or accept
Anything of pecuniary value
From a lobbyist or principal.

§19.45 (3)

No person may offer or give to a state public official, directly or indirectly, AND
No state public official
May solicit or accept from any person, directly or indirectly,
Anything of value
If it
Could reasonably be expected to influence the state public official's vote, official actions or judgment¹, OR

¹ The statute's application turns on an objective, not a subjective standard. It prescribes an official's solicitation of anything of value if an impartial observer would reasonably expect it to influence the official's judgment in a manner related to his or her office. 7 Op. Eth. Bd. 20 (1983), 14 (1983); 5 Op. Eth. Bd. 101 (1982); 4 Op. Eth. Bd. 95 (1981) and 51 (1980).

Could reasonably be considered as a reward for any official action or inaction on the part of the state public official.

§19.56 (3)(c)

Notwithstanding § 19.45:

A state public official

May receive and retain on behalf of the state. . .

Food or beverage or payment . . . of actual and reasonable costs

That the official can show by clear and convincing evidence were .

. .

Received on behalf of the state of Wisconsin AND

Primarily for the benefit of the state AND NOT

Primarily for the private benefit of the official or any other person.

**Restraints apply to you, not to people not covered
by ethics and lobbying laws**

¶3 Statutes administered by the Ethics Board apply to lobbyists and to key officials of our state identified at §19.42 (14), Wisconsin Statutes. They do not apply to others. Were you to commission your spouse, an employee of your agency, or a volunteer unassociated with state government, it is doubtful that Wisconsin's Ethics Code or lobbying law would have any implication for their conduct. However a state government official may not do through an agent, that which the official is prohibited from doing directly.²

Acceptance versus Solicitation

¶4 A thrust of Wisconsin's Ethics Code is to bar government official's use of government position to obtain a personal advantage. Neither Wisconsin's lobbying law nor Ethics Code is an obstacle to the contribution of goods or services or money to the state of Wisconsin. Section 19.45 (3) underscores that point with respect to the Ethics Code. The lobbying law, however, precludes elected officials and officials with duties pertaining to the promulgation of rules from using the title, prestige, and power of position, whether directly or indirectly, to ask for contributions from lobbyists and from the organizations that employ them; and the Ethics Code forbids state public official from using the title, prestige, and power of position, whether directly or indirectly, to ask for contributions from others if either the contribution or the failure to contribute could reasonably be expected to influence the official's action or judgment or considered a reward for the official's action or inaction.

² 1998 Wis Eth Bd 5; 1998 Wis Eth Bd 2; 1996 Wis Eth Bd 14; 1995 Wis Eth Bd 7.

Agency

¶5 The information your office has supplied us provides that you propose the use of a volunteer fundraiser to solicit funds for general operational expenses. The only interaction between the fundraiser and those associated with the State would consist of an initial directive regarding the amount of money to be raised, periodic progress reports from the fundraiser, and necessary contacts regarding the delivery of donated goods.

¶6 Notice that §19.45 (3), addresses a solicitation made either *directly* or *indirectly*. Applying this section, we have had many occasions to address agency.

[The] prohibition applies whether contributions that are solicited are directed toward the official's own benefit or to the benefit of another.³ The statutory bar extends to the solicitation or acceptance of contributions to a state agency.⁴ Moreover, it applies whether an official solicits funds personally or through the agency's employees acting at the official's behest.⁵

1998 Wis Eth Bd 5, ¶10. We reaffirm these precedents.

¶7 In other words, the solicitation of contributions to support the operation of your agency, as best as we can discern, would be at your behest. The person or people soliciting contributions would be acting as your agents in furtherance of your directive, request, or desire. *Wisconsin Statutes* permit this but only if it would be unreasonable to believe that a potential donor's contribution or failure to contribute would influence your judgment or be a reward for past action.

¶8 Analysis of the latter requires an assessment of the circumstances specific to a request.

Identity of donor

¶9 If you were shielded from knowledge of who is asked to contribute, who declined to contribute, and who did contribute, it would be unreasonable to believe that a contribution would affect your judgment in a way unfavorable or favorable to either. In this connection you have advised us that there would be no communication with you or other state officials regarding

3 1998 Wis Eth Bd 2 ¶10; 1996 Wis Eth Bd 14, ¶ 6; 1995 Wis Eth Bd 7; 1994 Wis Eth Bd 1 ¶ 5; 1991 Wis Eth Bd 6; 10 Op. Eth. Bd. 47 (1988), 43 (1987); 9 Op. Eth. Bd. 45 (1987), 29 (1986); 7 Op. Eth. Bd. 19 (1983), 10 (1983); 5 Op. Eth. Bd. 101 (1982); 4 Op. Eth. Bd. 93 (1981); 4 Op. Eth. Bd. 51 (1980).

4 1998 Wis Eth Bd 5 ¶10; 1996 Wis Eth Bd 14, ¶6; 1995 Wis Eth Bd 7; 10 Op. Eth. Bd. 31 (1988); 9 Op. Eth. Bd. 9 (1986); 7 Op. Eth. Bd. 19 (1983).

5 1998 Wis Eth 5 ¶10; 1998 Wis Eth Bd 2 ¶10; 1996 Wis Eth Bd 14, ¶6.

potential sources of donations, and no communication with you or any state official regarding whether or what any group or individual had agreed or declined to donate.

¶10 We accept that it is offered as a belief earnestly held and that your staff would try to insulate you from this knowledge. Even so, you, your employees cannot control what knowledge will come to your attention, even in spite of your and their best intentions. Others have tried and not succeeded at screening themselves from knowledge of contributions to state government. Donors often have a powerful interest in making their generosity known to the beneficiaries of their largesse. Moreover, we foresee that news organizations will interest themselves in the matter of who is paying the tab for agency operations and publish the information for all who gather their news from newspaper, radio, and television. It is not credible that information available in the daily newspaper would remain unknown to you, the person most interested in the availability of funds for operation of the agency.

¶11 Another practical impediment to maintaining secrecy of donors are contributions in-kind. For example, an offer to supply the agency with a specific product is likely to signal a contribution from that producer or distributor.

¶12 If information about private donors' contributions to pay for agency operations could be kept secret from you, the Ethics Code would not be an impediment to your proceeding in the course about which you have asked. That result is attainable only in theory. To be secret from you it must be secret from the public. For you to maintain a secret fund to pay for your agency's operations is not an outcome the Ethics Board can support.

Nature and value of donation

¶13 It would be unreasonable to believe that a contribution of small monetary consequence would be likely to influence your judgment. Precisely how great a contribution might be and still escape the statute's proscription requires examination of the totality of the circumstances.

Donor's interest in actions of state government

¶14 It would be unreasonable to believe that a contribution of any value would be likely to influence your judgment if it came from a source that lacked an interest in the actions of state government.

¶15 However, the Board has repeatedly advised that state officials not solicit contributions from individuals or entities that are likely to be

materially affected by laws or rules which the official's agency is called upon to interpret or apply⁶ or which do business with the official's agency.⁷

¶16 You should not use your name, letterhead, office, or title or prestige of office to solicit money or payments or services or other things of value from a person or organization over whose actions your agency exercises substantial discretion⁸ or from officers or directors or employees of businesses regulated by your agency⁹ or from associations of these businesses or people,¹⁰ (unless, of course, you are insulated from knowledge of responses to the solicitation).¹¹

Case by case review

¶17 The circumstances attendant to contributions as yet unrealized are too varied and too speculative to permit *a priori* statement of a formula more precise than the test that the Legislature has already provided, namely *reasonably likely to influence*.

¶18 The year 2003 finds the state of Wisconsin in an era of financial restraint. A search for an alternative to the public purse as a source of funds to pay government's monetary costs is certainly in order. These alternatives arrive, however, with their own costs, including the diminution of confidence in state government.

Advice

¶19 Stated affirmatively, you may proceed with a plan to have another solicit assistance for operation of the agency to the extent, but only to the extent that you could undertake the solicitation directly. The limitation upon you, however, is substantial. Whether directly or through another acting at your behest, you may not solicit contributions of money, goods, or service EITHER:

- (1) from a lobbyist or from an organization that employs a lobbyist OR
- (2) from anyone if either the contribution or the failure to contribute could reasonably be
 - a. expected to influence your official action or judgment or
 - b. considered a reward for your official action or inaction.

WR1151

⁶ 1998 Wis Eth Bd 2 ¶11; 1996 Wis Eth Bd 14 [7]; 10 Op. Eth. Bd. 3i; 7 Op. Eth. Bd. 9 (1983).

⁷ 1998 Wis Eth Bd 5 ¶11; 1998 Wis Eth Bd 2 ¶11.

⁸ 9 Op. Eth. Bd. 9 (1986); 4 Op. Eth. Bd. 95 (1981) and 51 (1980).

⁹ 9 Op. Eth. Bd. 9 (1886).

¹⁰ 9 Op. Eth. Bd. 9 (1986).

¹¹ 4 Op. Eth. Bd. 95 (1981).